

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, SUITE E-306  
INDIANAPOLIS, INDIANA 46204-2764

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IN THE MATTER OF THE PETITION OF )  
THE CITY OF AUBURN, INDIANA, BY )  
ITS MUNICIPALLY OWNED ELECTRIC )  
UTILITY FOR APPROVAL OF A CHANGE )  
IN ITS ASSIGNED SERVICE AREA )  
BOUNDARIES ON U.S.G.S FACET X-5 TO )  
INCORPORATE AN ANNEXED AREA )  
PURSUANT TO I.C. 8-1-2.3-6(1) )  
)  
RESPONDENT: THE CITY OF GARRETT, )  
INDIANA )

FILED

APR 12 2004

INDIANA UTILITY  
CAUSE NO. 42558 REGULATORY COMMISSION

You are hereby notified that on this date the Presiding Officer in this Cause makes the following Entry:

On February 25, 2004, the Indiana Utility Regulatory Commission ("Commission") issued an Order in this Cause that approved a boundary change to the assigned electric service areas of the municipal electric utilities of the City of Auburn, Indiana ("Petitioner") and the City of Garrett, Indiana ("Incumbent"). Pursuant to Ind. Code 8-1-2.3-6(1), this boundary change allowed Petitioner to include within its assigned electric service area an area annexed by Petitioner that had been within Incumbent's assigned service area. Included within the February 25, 2004 Order was the requirement that Petitioner pay Incumbent the amounts due under Ind. Code 8-1-2.3-6(1)(B).

On April 7, 2004, Petitioner and Incumbent filed a *Joint Petition To Toll Time Under I.C. 8-1-2.3-6(C)* ("Joint Petition"). The statute to which the Joint Petition refers reads, in part, as follows:

If the municipally owned electric utility fails to make a payment under clause (B), an affected incumbent electricity supplier may, not later than sixty (60) days after the payment is due and after giving the municipally owned electric utility reasonable notice of and an opportunity to cure the defect, file with the commission a petition alleging that a payment due under clause (B) has not been made. (Ind. Code 8-1-2.3-6(1)(C)).

The Joint Petition states that Petitioner and Incumbent have not yet completed negotiations with respect to the compensation provisions of Ind. Code 8-1-2.3-6(1)(B) and that they desire to continue discussions without waiving the rights established under Ind. Code 8-1-2.3-6(1)(C). Petitioner and Incumbent have agreed that the deadline for

filing a petition with the Commission, as established in Ind. Code 8-1-2.3-6(1)(C), should be tolled so that Petitioner and Incumbent can continue their discussions with respect to the compensation provisions of Ind. Code 8-1-2.3-6(1)(B). The Joint Petition asserts that, unless tolled, the deadline for filing a petition with the Commission under Ind. Code 8-1-2.3-6(1)(C) would be March 22, 2004.

Based on the above tolling agreement between Petitioner and Incumbent with respect to the Order issued in this Cause, the time within which to file a petition and the rights of both Petitioner and Incumbent under Ind. Code 8-1-2.3-6(1)(C) should not be waived, notwithstanding the filing deadline established in that statute. Unless Petitioner and Incumbent jointly request otherwise, and that request is approved, the Commission should not recognize the agreed-upon tolling period to extend for more than ninety (90) days beyond the date of this Entry.

**IT IS SO ORDERED.**

William G. Divine  
William G. Divine, Administrative Law Judge

April 12, 2004  
Date

Nancy E. Manley  
Nancy E. Manley, Secretary to the Commission